IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6010 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

J F JHALA

Versus

CHIEF SECRETARY TO GOVERNMENT OF GUJARAT

Appearance:

1. Special Civil Application No. 6010 of 2001

MR DJ BHATT for Petitioner No. 1

MR ND GOHIL, ASSTT.GOVERNMENT PLEADER for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 20/09/2004

ORAL JUDGEMENT

In this petition, though several different and unconnected reliefs have been prayed, the learned Counsel for the petitioner confines the challenge to the order dated 2.2.2001, by which the Disciplinary Authority

directed that the pension of the petitioner be reduced by an amount of Rs. 73,877/- and the said amount be recovered from the pensionary benefits of the petitioner. So far as other prayers are concerned, it will be open for the petitioner to make representation to the respondents and it is expected that the same will be considered and suitable reply will be given to the petitioner, as expeditiously as possible.

2. This case has a chequered history with which we are not directly concerned and the record of past history can therefore be omitted. To state precisely, the petitioner was served with a charge-sheet dated 24.2.1994, making certain allegations against the petitioner. Before this charge-sheet was issued, the petitioner was placed under suspension by order dated 1.9.1993. During the pendency of the Departmental proceedings and while still under suspension, the petitioner reached the age of superannuation and retired with effect from 31st October, 1996. The Disciplinary Authority, upon completion of the enquiry, passed an order dated 21/22.11.2000, by which the increment of the petitioner was with-held for one year with future effect. It is also provided that 50% of the subsistence allowance paid to the petitioner during his suspension will be recovered.

3. The petitioner challenged the said order of the Disciplinary Authority before the Appellate Authority and the Appellate Authority, by its order dated 20th December, 2000, was pleased to set aside the same on the ground of violation of principles of natural justice and directed the Disciplinary Authority to pass fresh orders after following the procedure laid down in Section 69(9) of the Grant-in-Aid Code and Section 27-A(6) of the Gujarat Secondary Education Act.

4. On the basis of the communication dated 11.1.2001, by which the petitioner was supplied certain documents and was called upon to show cause why penalty should not be imposed upon him pursuant to Section 27-A(2) of the Gujarat Secondary Education Act, the learned Counsel for the petitioner contends that the Disciplinary Authority had not followed any further procedure as per the directions of the Appellate Authority in its order dated 22.11.2000 and that therefore, no fresh order of punishment could have been passed.

5. The Disciplinary Authority, after issuance of the said show cause notice, passed the final order of penalty

on 2.2.2001, which order is challenged in the present petition, by which the Disciplinary Authority was pleased to order reduction in pension of the petitioner by Rs. 73,877/- and further ordered that the said amount be recovered from the pensionary benefit of the petitioner.

6. The learned Counsel for the petitioner has challenged the said order and rightly so, in my opinion, that the amount of Rs. 73,877/- was ordered to be recovered by way of excess payment of subsistence allowance which was never part of the charge against the petitioner in the charge-sheet dated 24.2.1994. Obviously, when the petitioner was charged on 24.2.1994, the petitioner was asked to respond to certain allegations of misconduct. The question of over-payment of subsistence allowance is obviously not part of the charge-sheet. On the completion of the Departmental enquiry, the Disciplinary Authority could have passed any appropriate punishment provided for in the Service Rules, but no amount of recovery or reduction in pension could have been ordered on the ground that the petitioner was paid subsistence allowance in excess of his entitlement. Even if the petitioner was paid subsistence allowance in excess of his entitlement, the same could not have been adjusted or withdrawn without giving a proper opportunity to the petitioner to defend his position. Obviously, the Departmental proceedings which had started with the issuance of the charge-sheet dated 24.2.1994 could not have been utilised by the Disciplinary Authority to recover the alleged excess payment of subsistence allowance. In that view of the matter, on this short ground alone, the impugned order dated 2.2.2001 is required to be quashed and is hereby quashed and set aside. Since the question of entitlement of the petitioner to receive the subsistence allowance in full or in part is not directly involved in this petition, I do not make any observation with respect to the same and nothing that is said in this order is meant to come in way of the respondents in seeking recovery of the excess payment, if any made, if otherwise permissible under the law after following due process.

7. In view of this order, the consequences thereof must follow and the petitioner must be paid the remaining amount of his pensionary benefits, which shall be done within a period of eight weeks from the date of receipt of a copy of this order. This will ofcourse be subject to the petitioner co-operating with the respondents by supplying necessary materials as may be required under the Rules. The petition is disposed of accordingly. Rule is made absolute to the above extent with no order

as to costs. Direct service is permitted.

(Akil Kureshi, J.)

*/Mohandas